

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSHUA TAYLOR)	
Claimant)	
)	
VS.)	
)	
PRICE TRUCK LINE, INC.)	
Respondent)	Docket No. 1,053,185
)	
AND)	
)	
NATIONAL INTERSTATE INS. CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier request review of the December 16, 2010¹ Preliminary Hearing Order entered by Administrative Law Judge Rebecca A. Sanders.

ISSUES

The Administrative Law Judge (ALJ) ordered respondent to provide claimant a list of three physicians from which claimant would choose the authorized treating physician and also ordered respondent to pay temporary total disability compensation from September 13, 2010, until claimant is released to return to work.

Respondent requests review of whether claimant's accidental injury arose out of and in the course of employment.

Claimant argues the ALJ's order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant started working as a truck driver for respondent in April 2008. He drove a single axle semi-truck in order to deliver goods. Claimant's job consisted of driving to the

¹ The Division's database indicates the file date of the Preliminary Hearing Order is December 15, 2010, and its certified mailing is December 16, 2010.

destination, unloading the goods either by hand or forklift and carrying it to the customer. This required him to lift from 0-250 pounds, bend, twist, walk and stand.

In 2006, before his employment with respondent, claimant had developed low back problems and an MRI study revealed degenerative disk disease. Claimant was treated with a series of three epidural injections. No temporary or permanent work restrictions were deemed necessary. Claimant testified that after treatment he would be pain free for a couple of weeks to a month or so and then experience a little pain. But he was able to perform his job duties.

On January 6, 2010, claimant had just delivered a load in Manhattan, Kansas and he was driving to Abilene, Kansas. He reached Junction City, Kansas, during a snow storm with high winds when his semi-truck with two trailers jackknifed on the interstate. The semi left the roadway and landed in a ditch. Claimant injured his lower back and also hit his head. An ambulance was called and it took claimant to Abilene Hospital's emergency room. X-rays were taken and then claimant was sent home with prescription medication to alleviate the pain. Respondent was immediately notified of the accident. Claimant was off work for two or three days and then returned to full duty. Claimant continued to have low back problems but he continued working because he needed a paycheck.

After the January 6, 2010 accident, claimant gave a recorded statement and indicated that he did not feel he had any problems above and beyond what he had before the accident.

Claimant suffered another accidental injury on March 26, 2010. He was delivering 12 55-gallon barrels of chemical treatment to K-State. Three or four barrels fell off the pallet in the trailer. Claimant was lifting these 55-gallon barrels to return them to the pallet so that he could unload the barrels from the truck. Claimant testified that he had returned two of the barrels to the pallet and was trying to return the third barrel to the pallet when he experienced pain in his lower back and down his left leg. He contacted his dispatcher immediately and advised him of the accident. Because of the leg pain claimant had trouble using his left leg to engage the clutch. Claimant sought medical treatment with his doctor and was placed on light-duty work for a couple of days. Respondent provided him with a co-worker to ride with him to load and unload the freight.

Claimant continued to work but missed a lot of work due to migraines or back pain. By the end of August, claimant had missed enough work that he had used all of his vacation leave. In September 2010 claimant sought treatment with his personal physician who took claimant off work. The last day claimant worked was September 9, 2010. Claimant testified that as he continued to try to work his problems progressively worsened.

Respondent argues claimant had ongoing back problems and migraine headaches before the vehicular accident and he had agreed that after that accident his condition was the same as it had been before the accident. Consequently, respondent argues that his

current condition and need for medical treatment are not related to the accident. If that were the only accident claimant suffered there might be some merit to the argument. However, after the second accident, where claimant injured his back lifting the barrels, claimant stated that his back and especially his leg pain worsened. Claimant's statement that his condition had returned to the pre-accident condition was made after the vehicular accident but no such statement was made regarding the second accidental injury.

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.² The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.³ The claimant's testimony alone is sufficient evidence of his physical condition.⁴

It is uncontroverted that claimant suffered accidental injury to his back after lifting the barrels. He testified his condition worsened. He was placed on light duty and provided temporary help performing his work. Although it is clear from this evidentiary record that claimant had preexisting problems with his low back as well as migraine headaches, the record also establishes that after his accidental injury lifting the barrels his condition worsened. The claimant has met his burden of proof to establish that he suffered accidental injury arising out of and in the course of his employment which, at a minimum, aggravated his preexisting low back condition and entitles him to medical treatment.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁵ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁶

WHEREFORE, it is the finding of this Board Member that the Preliminary Hearing Order of Administrative Law Judge Rebecca A. Sanders dated December 16, 2010, is affirmed.

² *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984); *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

³ *Hanson v. Logan U.S.D.* 326, 28 Kan. App.2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).

⁴ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001).

⁵ K.S.A. 44-534a.

⁶ K.S.A. 2010 Supp. 44-555c(k).

IT IS SO ORDERED.

Dated this 28th day of February, 2011.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
D'Ambra M. Howard, Attorney for Respondent and its Insurance Carrier
Rebecca A. Sanders, Administrative Law Judge